



07-25-07

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ATTORNEY DOCKET NO. 14028.0284U2
EXPRESS MAIL LABEL NO. EV 915328636 US
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Neville et al.) Confirmation No. 7991
Application No. 09/810,999) Examiner: Ewoldt, Gerald R.
Filed: March 16, 2001) Art Unit: 1644
For: "USE OF IMMUNOTOXINS TO INDUCE)
IMMUNE TOLERANCE TO PANCREATIC)
ISLET TRANSPLANTATION")

**PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW IMPROPER
HOLDING OF ABANDONMENT AND CONDITIONAL PETITION FOR REVIVAL OF
AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37
C.F.R. § 1.137(b)**

MAIL STOP PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, Virginia 22313-1450

NEEDLE & ROSENBERG, P.C.
Customer No. 36339

July 23, 2007

Sir:

Pursuant to 37 C.F.R. § 1.181 and MPEP § 711.03(c)li, Applicants hereby petition for withdrawal of the holding of abandonment communicated in the Notice of Abandonment mailed May 30, 2007. Applicants submit that the Notice of Abandonment was issued in error. The Notice of Abandonment indicates that the present application was abandoned because of failure to timely pay the issue fee. On May 1, 2007, Applicants timely responded to the Notice of Allowance mailed on February 1, 2007. Applicants will hereby show that a Response was

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mailed to the United States Patent & Trademark Office (PTO) on May 1, 2007; therefore, Applicants submit that the Notice of Abandonment for failure to timely pay the issue fee by May 1, 2007, was issued in error.

Statement of Facts

Applicants received an Examiner Communication dated June 4, 2007 from the PTO on May 30, 2007, stating that the payment due on May 1, 2007 was not timely paid having been received on May 4, 2007, three days after the deadline for payment. Applicants respectfully submit that under 37 C.F.R. § 1.8, correspondence are considered timely filed if payment is deposited with the U.S. Postal Service with sufficient postage as first class mail and the correspondence includes a certificate stating the date of deposit. Because issue fee payments are not expressly excluded from benefit of certificate of mailing under 37 C.F.R. § 1.8(a)(2), an issue fee payment complying with the requirements 37 C.F.R. § 1.8 is considered timely filed if payment is made within the statutory period.

Applicants respectfully submit that issue fee payment was timely made and deposited with the U.S. Postal Service on May 1, 2007. Applicants provide herewith a copy of Part B of the Issue Fee Transmittal which shows the signature of Gwendolyn D. Spratt authorizing submission and payment of the Issue Fee on May 1, 2007 (Exhibit A). Applicants also provide herewith a copy of Needle & Rosenberg's (N&R) PTO Filing Recordation Sheet showing the Payment of the Issue Fee was mailed on May 1, 2007 (Exhibit B) and the postcard submitted with the Issue Fee payment which is stamped received by the USPTO on May 4, 2007 and indicates that a certificate of mailing dated May 1, 2007 is included (Exhibit C). However, applicants inadvertently failed to execute the Certificate of Mailing block of the Issue Fee Transmittal sheet – Part B (see Exhibit A). Also enclosed is a declaration by Ms. Gwendolyn D. Spratt (see Exhibit D) indicating that she timely signed the issue fee transmittal on May 1, 2007, and submitted the issue fee payment and transmittal in accordance with the N&R office mail procedures for outgoing mail on May 1, 2007, but unintentionally failed to sign the certificate of mailing. As further noted by the N&R filing recordation sheet signed by Mr. Scott Darnell on

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May 1, 2007 (see Exhibit B) as well as the declaration of Mr. Darnell (see Exhibit E), the signed issue fee transmittal and issue fee payment were deposited with the U.S. Postal Office at 6:38pm on May 1, 2007. Applicants respectfully submit that as the evidence submitted herewith indicates the issue fee payment was, in fact, timely submitted by the statutorily prescribed deadline of May 1, 2007, and except for the unintentional absence of the signature on the certificate of mailing, Applicants' issue fee would have been considered timely filed. In view of this showing, Applicants believe withdrawal of the holding of abandonment would be proper. Applicants respectfully request withdrawal of the holding of abandonment in the present application.

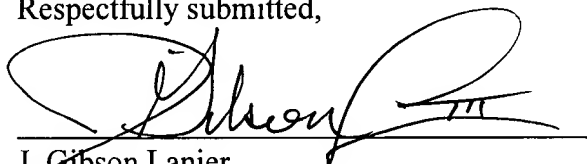
Favorable consideration of this Petition is earnestly solicited.

In the event that a Petition for Revival under 37 C.F.R. §1.137 is required, please consider this as a conditional Petition for Revival under 37 C.F.R. §1.137(b). Pursuant to 37 C.F.R. § 1.137(b), the Applicant hereby states that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional. As the issue fee was previously submitted, the issue fee payment is not believed to be due. Additionally, since the Application was filed on or after June 8, 1995, no terminal disclaimer is required.

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No payment is believed to be due. This amount is believed to be correct. However, in the event that a petition for revival under 37 C.F.R. §1.137(b) is required, the Commissioner is hereby authorized to charge any additional fees which may be required, including the amount of \$1,500.00 for the Petition Fee, as appropriate for a large entity per 37 C.F.R. §1.17(m), or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Gibson Lanier', is written over a horizontal line.

J. Gibson Lanier
Registration No. 57,519

NEEDLE & ROSENBERG, P.C.
Customer Number 36339
(678) 420-9300
(678) 420-9301 (fax)

Complete a



PART B FEE(S) TRANSMITTAL

kwiktag®

013 706 526

with applicable fee(s) to: Mail

Mail Stop ISSUE FEE

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

or Fax (571)-273-2885

JUL 23 2007

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed with appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

36339

7590

02/01/2007

NATIONAL INSTITUTE OF HEALTH
C/O NEEDLE & ROSENBERG, P.C.
SUITE 1000
999 PEACHTREE STREET
ATLANTA, GA 30303

Note: A certificate of mailing can only be used for domestic mailings of Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

Gwendolyn D. Spratt

(Depositor's name)

(Signature)

(Date)

APPLICATION NO.

FILING DATE

FIRST NAMED INVENTOR

ATTORNEY DOCKET NO.

CONFIRMATION NO.

09/810,999

03/16/2001

David M. Neville

14028.0284U2

7991

TITLE OF INVENTION: USE OF IMMUNOTOXINS TO INDUCE IMMUNE TOLERANCE TO PANCREATIC ISLET TRANSPLANTATION

APPLN. TYPE

SMALL ENTITY

ISSUE FEE DUE

PUBLICATION FEE DUE

PREV. PAID ISSUE FEE

TOTAL FEE(S) DUE

DATE DUE

nonprovisional

NO

\$1400

\$300

\$0

\$1700

05/01/2007

EXAMINER

ART UNIT

CLASS-SUBCLASS

EWOLDT, GERALD R

1644

424-093700

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☒ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required. 36339

2. For printing on the patent front page, list

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively,

(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 Needle & Rosenberg, P.

2

3

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

The Government of the United States of America,
as represented by the Secretary, Department of

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

ROCKVILLE, MARYLAND

Health and Human Services, NIH

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

☒ Issue Fee☐ Publication Fee (No small entity discount permitted)☒ Advance Order - # of Copies 12

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

☐ A check is enclosed.☒ Payment by credit card. Form PTO-2038 is attached.

☒ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 14-0629 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature

Date

5-1-07

Typed or printed name

Gwendolyn D. Spratt

Registration No.

36,016

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

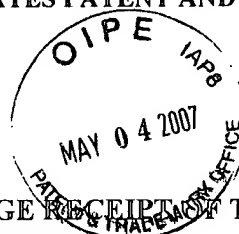


NEEDLE & ROSENBERG, P.C.
PTO FILING RECORDATION SHEET

SECTION I. DOCKETING OR ATTORNEY / AGENT / PARALEGAL / SECRETARY Completed By: Signature: <u>Evelyn Sanders</u> Date: <u>May 1, 2006</u> Printed Name: <u>Evelyn Sanders</u>		
Date Received / Atty. Para. Client / Matter Number & Application Serial No.	May 1, 2007 (GDS/JGL:es) 14028.0284U2 09/810,999	
Document(s) Filed	1. PART B – FEE(S) TRANSMITTAL (1 page) 2. Credit Card Payment Form PTO-2038 authorizing payment in the amount of \$1736 (Issue Fee \$1400), Publication Fee (\$300), and Extra Copies (\$36) – Large Entity (1 page) 3. Fee Address Indication Form (1 page) Certificate of Mailing dated May 1, 2007	
Certificate Of Mailing Date	May 1, 2007	
SECTION II. OFFICE SERVICES OR ATTORNEY / AGENT / PARALEGAL / SECRETARY Completed By: Signature: <u>Scott Darnell</u> Date: <u>5-1-07</u> Printed Name: <u>Scott Darnell</u>		
Method Of Mailing:	EXPRESS MAIL (E) Express Mail Number:	<u>REGULAR MAIL (R)</u>
Date Taken to Post Office / Mail Box and Full Address of Post Office / Mail Box		post office 183 Forsyth St. SW Atlanta, GA 30302/3
Post Office Hours of Operation		8-8pm
Time Placed In Mail Box OR Filed With Postal Clerk		Time Placed In Mail Box: 6:38
Verified Date Stamp by Postal Clerk Prior to Leaving Postal Window	Verified Date Stamp: YES ____ NO ____	Verified Date Stamp: N/A
Returned Express Mail Receipt to Docketing Clerk	YES ____ DATE ____	
SECTION III. DOCKETING Completed By: Signature: <u>[Signature]</u> Date: <u>05/01/07</u> Printed Name: _____		
Express Mail Receipt Logged At N&R & Given Back to Attorney, Paralegal or Secretary	YES ____ Date: _____ Time: _____	
	FACSIMILE (F)	
Fax Completed:		Time: _____
All Information Logged In On N&R Master Record & Back to Attorney, Paralegal or Secretary		



RECEIVED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Mail Stop ISSUE FEE
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450



SIR: PLEASE ACKNOWLEDGE RECEIPT OF THE FOLLOWING:

1. PART B - FEE(S) TRANSMITTAL (1 Page)
 2. Credit Card Payment Form PTO-2038 authorizing payment in the amount of \$1736 (Issue Fee (\$1400), Publication Fee (\$300) and Extra Copies (\$36) - Large Entity (1 page)
 3. Fee Address Indication Form (1 page)
- Certificate of Mailing dated May 1, 2007

RECEIVED

MAY 25 2007

In RE Application of: NEVILLE *et al.*

NEEDLE & ROSENBERG

Title: USE OF IMMUNOTOXINS TO INDUCE IMMUNE TOLERANCE TO
PANCREATIC ISLET TRANSPLANTATION

Application No. 09/810,999

Art Unit No.

1644

Filed: March 16, 2001

Confirmation No:

7991

Attorney Docket No. 14028.0284U2

(GDS/JGL:es)

505/1001

Needle & Rosenberg	
DOCKETED	Date 5/25/07
Reviewed	Name Date
Scanned	

EXHIBIT

00 C 00



ATTORNEY DOCKET NO. 14028.0284U2
EXPRESS MAIL LABEL NO. EV 915328636 US
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
)	
Neville et al.)	Art Unit: 1644
)	
Application No. 09/810,999)	Examiner: Gerald R. Ewoldt
)	
Filing Date: March 16, 2001)	Confirmation No. 7991
)	
For: "USE OF IMMUNOTOXINS TO INDUCE)	
IMMUNE TOLERANCE TO PANCREATIC)	
ISLET TRANSPLANTATION")	

DECLARATION OF MS. GWENDOLYN D. SPRATT

MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NEEDLE & ROSENBERG, P.C.
Customer Number 36339

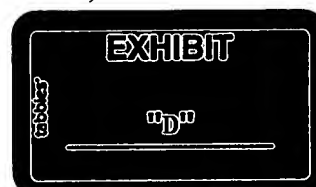
July 23, 2007

Sir:

I, Gwendolyn D. Spratt, a citizen of the United States residing at 436 Claire Drive, N.E., Atlanta, GA 30307, hereby declare that:

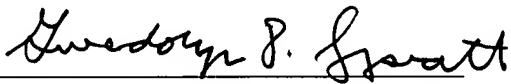
1. I am a Patent Attorney (Registration Number 36,016) with Needle & Rosenberg, P.C.
2. I was working on May 1, 2007.
3. As part of my duties as Patent Attorney, I am responsible for submitting issue fee transmittals and issue fee payments on behalf of my clients.

4. On May 1, 2007, I signed the Issue Fee Transmittal (see Exhibit A) and deposited the Issue Fee Transmittal and Issue Fee payment with Scott Darnell of Document Technologies, Inc., our firm's office services vendor, in accordance with our office mail procedures. However, as a result of an unintentional oversight, I did not sign the certificate of mailing on the very same Issue Fee Transmittal I signed to authorize payment of the Issue Fee. The Issue Fee Transmittal was deposited by Mr. Darnell via first class mail on May 1, 2007, with the U.S. Postal Service (see the declaration of Mr. Darnell, enclosed herewith as Exhibit E).



5. I further declare that all statements made herein of my own knowledge and belief are true and that all statements made on information and belief are believed to be true, and further, that the statements are made with the knowledge that willful false statements are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 7-23-01


Gwendolyn D. Spratt
Registration No. 36,016



ATTORNEY DOCKET NO. 14028.0284U2
EXPRESS MAIL LABEL NO. EV 915328636 US
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
)	
Neville et al.)	Art Unit: 1644
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Application No. 09/810,999)	Examiner: Gerald R. Ewoldt
)	
Filing Date: March 16, 2001)	Confirmation No. 7991
)	
For: "USE OF IMMUNOTOXINS TO INDUCE)	
IMMUNE TOLERANCE TO PANCREATIC)	
ISLET TRANSPLANTATION")	

DECLARATION OF MR. SCOTT DARNELL

MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NEEDLE & ROSENBERG, P.C.
Customer Number 36339

July 23, 2007

Sir:


I, Scott Darnell, a citizen of the United States residing at 1346 Old Coach Road, Marietta, GA 30008, hereby declare that:

1. I am an employee of Document Technologies, Inc., working in the branch located within the law offices of Needle & Rosenberg, P.C.
2. I was working on May 1, 2007.
3. As part of my duties as customer service specialist, I am responsible for taking the daily mail to the post office and recording on a recordation sheet, the exact time and location where the mail is deposited with the United States Postal Service.
4. On May 1, 2007, I deposited the Issue Fee Transmittal and Issue Fee payment for U.S. Application No. 09/810,999 with the United States Postal Service at 6:38pm at the postal office located at 183 Forsyth St. SW, Atlanta, GA 30302 as evidenced by the recordation sheet set forth as Exhibit B.



5. I further declare that all statements made herein of my own knowledge and belief are true and that all statements made on information and belief are believed to be true, and further, that the statements are made with the knowledge that willful false statements are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 7-23-07



Scott Darnell